



State of New Hampshire
DEPARTMENT OF ENVIRONMENTAL SERVICES

6 Hazen Drive, P.O. Box 95, Concord, NH 03302-0095
(603) 271-3503 FAX (603) 271-2867



Clearwater Artesian Well Co., Inc.
Attn: Bruce Morgridge
PO Box 122
Rollinsford NH 03869

Re: 7 Mill Road
North Hampton, NH

**NOTICE OF PROPOSED
ADMINISTRATIVE FINE
AND HEARING
No. AF 02-040**

October 18, 2002

I. INTRODUCTION

This Notice of Proposed Administrative Fine and Hearing is issued by the Department of Environmental Services, Water Division ("the Division") to Clearwater Artesian Well Co., Inc., pursuant to RSA 482-B and Env-C 616. The Division is proposing that fines totaling **\$200** be imposed against Clearwater Artesian Well Co., Inc. for the violations alleged below. **This notice contains important procedural information. Please read the entire notice carefully.**

II. PARTIES

1. The Department of Environmental Services, Water Division, is an administrative agency of the State of New Hampshire, having its principal office at 6 Hazen Drive, Concord, NH.
2. Clearwater Artesian Well Co., Inc. is a New Hampshire corporation having a mailing address of PO Box 122, Rollinsford, NH 03869.

III. SUMMARY OF FACTS AND LAW SUPPORTING CLAIMS

1. RSA 482-B regulates water well contractors and pump installers and establishes the NH Water Well Board ("Board"). Pursuant to rulemaking authority conferred by RSA 482-B:4, the Board has adopted rules to implement this regulatory program (We 100 to 1000, "Water Well Rules"). Under RSA 482-B:8 and :16, the Department of Environmental Services ("DES") has concurrent authority with the Board to enforce RSA 482-B and the Water Well Rules.
2. RSA 482-B:16, II authorizes the Commissioner of DES to impose administrative fines of up to \$2,000 for each offense for violations of RSA 482-B or of any rule adopted or license issued under that statute. Pursuant to rulemaking authority contained therein, the Commissioner has adopted Env-C 616 to establish the schedule of fines for such violations.
3. RSA 482-B:10 and We 801.03(a) and (c) require a water well contractor to file a well completion report with the NH Water Well Board ("Board") within 90 days following completion of the well.

4. Clearwater Artesian Well Co., Inc. is a licensed water well contractor in the State of New Hampshire holding license # 1236.
5. On August 21, 2002 the Board received an inquiry regarding the installation of two wells constructed for Aquarion Water Company of New Hampshire ("Aquarion"), formerly Hampton Water Works, on 7 Mill Road, North Hampton, New Hampshire.
6. A review of the site assessment report for the project submitted by Geosphere Environmental Management Inc identified two rock wells constructed on August 23, 2001 (MR-1) and August 30, 2001 (MR-2) respectively, by Clearwater Artesian Well Co., Inc.
7. A search of the Board's records indicated that the well completion reports were not submitted as required by RSA 482-B:10 and We 801.03(a) and (c).
8. The well completion reports were subsequently submitted to the Board on August 23, 2002 by Clearwater Artesian Well Co., Inc.

IV. VIOLATIONS ALLEGED AND PROPOSED ADMINISTRATIVE FINES

1. Clearwater Artesian Well Co., Inc. has violated RSA 482-B:10 and We 801.03(a) and (c) by failing to submit a well completion report to the Water Well Board within 90 days of completion for the well constructed on or about August 23, 2001, identified as MR-1, at the Aquarion property, 7 Mill Road, North Hampton, New Hampshire. For this violation the Division is seeking a fine of \$100 pursuant to Env-C 616.02(e).
2. Clearwater Artesian Well Co., Inc. has violated RSA 482-B:10 and We 801.03(a) and (c) by failing to submit a well completion report to the Water Well Board within 90 days of completion for the well constructed on or about August 30, 2001, identified as MR-2, at the Aquarion property, 7 Mill Road, North Hampton, New Hampshire. For this violation the Division is seeking a fine of \$100 pursuant to Env-C 616.02(e).

For the violation identified above, Env-C 616.02(e) specifies a fine of \$1.00 per day for each calendar day after 90 days following completion of the well up to \$100.00 per report.

The total fine being sought is \$200.00.

V. REQUIRED RESPONSE, OPPORTUNITY FOR HEARING

Pursuant to Env-C 601.06, Clearwater Artesian Well Co., Inc. are required to respond to this notice. Please respond no later than November 18, 2002, using the enclosed form as follows:

If Clearwater Artesian Well Co., Inc. plans to attend the hearing, please have an authorized representative sign the appearance (upper portion) and return it to the DES Legal Unit, at the address as noted on the form.

2. If Clearwater Artesian Well Co., Inc. chooses to waive the hearing and pay the proposed

fine, please have an authorized representative sign the waiver (lower portion) and return it **with payment of the fine** to the DES Legal Unit.

3. If Clearwater Artesian Well Co., Inc. wishes to discuss the possibility of settling the case, please have an authorized representative sign the appearance and return it to the DES Legal Unit **and** call the DES Legal Unit to indicate Clearwater Artesian Well Co., Inc.'s interest in settling.

Clearwater Artesian Well Co., Inc. is not required to be represented by an attorney. If Clearwater Artesian Well Co., Inc. chooses to be represented by an attorney, the attorney must file an appearance and, if a hearing is held, submit proposed findings of fact to the person conducting the hearing.

If Clearwater Artesian Well Co., Inc. wishes to have a hearing but are unable to send an authorized representative to the hearing as scheduled, Clearwater Artesian Well Co., Inc. must notify the DES Legal Unit at least one week in advance of the hearing and request that the hearing be rescheduled. If Clearwater Artesian Well Co., Inc. does not notify the DES Legal Unit in advance and do not have an authorized representative attend the hearing, the hearing will be conducted anyway in accordance with Env-C 204.09.

VI. DETERMINATION OF LIABILITY FOR ADMINISTRATIVE FINES

Pursuant to Env-C 601.09, in order for any fine to be imposed after a hearing, the Division must prove, by a preponderance of the evidence, that Clearwater Artesian Well Co., Inc. committed the violation(s) alleged and that the total amount of fine(s) sought is the appropriate amount under the applicable statute and rules. Proving something by a preponderance of the evidence means that it is **more likely than not** that the thing sought to be proved is true.

If the Division proves that Clearwater Artesian Well Co., Inc. committed the violation(s) and that the total amount of fine(s) sought is the appropriate amount under the applicable statute and rules, then the fine sought will be imposed, subject to the following:

- * Pursuant to Env-C 601.09(c), the fine will be **reduced by 10%** for each of the circumstances listed below **that** Clearwater Artesian Well Co., Inc. **prove, by a preponderance of the evidence,** applies in this case: The violation was a one-time or non-continuing violation, **and** Clearwater Artesian Well Co., Inc. did not know about the requirement when the violation occurred, **and** the violation has not continued or reoccurred as of the time of the hearing, **and** any environmental harm or threat of harm has been corrected, **and** Clearwater Artesian Well Co., Inc. did not benefit financially, whether directly or indirectly, from the violation.

- 1 At the time the violation was committed, Clearwater Artesian Well Co., Inc. were making a good faith effort to comply with the requirement that was violated.

Clearwater Artesian Well Co., Inc. has no history of non-compliance with the statutes or rules implemented by DES or with any permit issued by DES or contract entered into with DES.

3. Other information exists which is favorable to Clearwater Artesian Well Co., Inc.'s case which was not known to the Division at the time the fine was proposed.

IMPORTANT NOTICE

An administrative fine hearing that is scheduled is a formal hearing. Any hearing will be tape recorded, and all witnesses will testify under oath or affirmation. At the hearing, the Division will present testimony and evidence to try to prove that Clearwater Artesian Well Co., Inc. committed the violation(s) alleged above and that the fine(s) should be imposed. The hearing is Clearwater Artesian Well Co., Inc.'s opportunity to present testimony and evidence that Clearwater Artesian Well Co., Inc. did not commit the violation(s) and/or that the fine(s) should not be imposed, or that the fine(s) sought should be reduced.

If Clearwater Artesian Well Co., Inc. has any evidence, such as photographs, business records or other documents, that Clearwater Artesian Well Co., Inc. believe show that Clearwater Artesian Well Co., Inc. did not commit the violation(s) or that otherwise support Clearwater Artesian Well Co., Inc.'s position, Clearwater Artesian Well Co., Inc. should bring the evidence to the hearing. Clearwater Artesian Well Co., Inc. may also bring witnesses (other people) to the hearing to testify on Clearwater Artesian Well Co., Inc.'s behalf.

If Clearwater Artesian Well Co., Inc. wish to have an informal meeting to discuss the issues, Clearwater Artesian Well Co., Inc. must contact the DES Legal Unit at (603) 271-6072 to request a prehearing conference.

* * * * *

Information regarding this proposed fine may be made available to the public via DES's Web page (www.state.nh.us/des). If Clearwater Artesian Well Co., Inc. has any questions about this matter, please contact the DES Legal Unit, at (603) 271-6072.

COPY

Harry T. Stewart, P.E., Director
Water Division

Enclosure (NHDES Fact Sheet #CO-2 2002)
Certified Mail/RRR #7000 0600 0023 9936 4735

cc: Water Well Board
Anthony P. Giunta, P.G., Administrator, WSEB
Gretchen C. Rule, Enforcement Coordinator - DES
Susan Weiss Alexant, Hearings and Rules Attorney - DES
DES PIP Office
Anne Edwards, Esq. - AGO
Jennifer J. Patterson, Esq. - AGO
(all w/out enclosure)

***** RETURN THIS PAGE ONLY *****

**CLEARWATER ARTESIAN WELL CO., INC.
IS REQUIRED BY LAW TO RESPOND TO THIS NOTICE.**

PLEASE RESPOND NO LATER THAN NOVEMBER 18, 2002

Please check the appropriate line and fill in the requested information below.

APPEARANCE On behalf of Clearwater Artesian Well Co., Inc.,

I request to have a formal hearing scheduled in this matter.

I request to have a pre-hearing conference scheduled in this matter.

I would like to meet informally to discuss the issues in this matter.

WAIVER OF HEARING On behalf of Clearwater Artesian Well Co., Inc.,

I certify that I understand the right to a hearing regarding the imposition of the proposed administrative fine and that I hereby waive those rights. The fine payment in the amount of \$200 paid to "Treasurer, State of New Hampshire" is enclosed.*

Pursuant to Env-C 203.05 please provide the following information:

Signature

Date

Name (please print or type): _____

Title: _____

Phone: _____

RETURN THIS PAGE ONLY TO:

**Department of Environmental Services
Legal Unit
6 Hazen Drive, P.O. Box 95
Concord, NH 03302-0095**

- * *If payment is made by a check, draft, or money order that is returned due to insufficient funds, pursuant to NH RSA 6:11-a, DES may charge a fee in the amount of 5% of the face amount of the original check draft, or money order or \$25.00, whichever is greater, plus all protest and bank fees, in addition to collecting the amount of the original check draft, or money order*